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REMARKS

Claims 1-45 are currently pending in the subject application and are presently under consideration. Claims 2, 41 are cancelled and claims 3, 5, 7 and 44 amended herein to correct minor informalities. Claims 1, 15, 16, 17, 22, 32, 39, 40, 42, 43 have been amended to clarify what applicant regards as the invention.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 1-21, 40 and 44, 45 Under 35 U.S.C. §103(a)

Claims 1-21, 40 and 44, 45 stand rejected under 35 U.S.C. §103(a) as being obvious over Yinger *et al.* (U.S. 5,960,204) in view of Cherkasova *et al.* (U.S. 6,425,057). Withdrawal of this rejection is respectfully requested for at least the following reasons.

Yinger *et al.* or Cherkasova *et al.*, alone or in combination do not teach or suggest applicant's claimed invention.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second there must be a reasonable expectation of success. Finally, *the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art and not based on the Applicant's disclosure. See In re Vaack, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).*

The claimed invention is directed to methods and systems of *intelligently* downloading /distributing resources (e.g., software components) among intermediate storage facilities and/or receivers, wherein a usage of the resources to be downloaded can be *probabilistically* determined and/or *predicted*. An exemplary method of the subject invention determines a *probability* that a software component will be used at least once

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during the life of a product, (and/or *predict* such usage) by accepting and/or determining user based factors (e.g., a probability that a user is a member of each user type class), accepting and/or determining resource based factors (e.g., a set of application classes, for each application class member resources identified), and the probabilistic relationship among various factors such as; between application classes, resource usage and user type classes. Moreover, applicant's claimed invention, further maximizes a "value" (e.g., associated with availability of the downloaded resource) given a constraint of intermediate storage facilities, and determines whether to change a constraint associated with the intermediate storage facility, based on changes in such value and associated cost.

Such aspects of applicant's claimed invention are not taught or suggested by Yinger *et al.* or Cherkasova *et al.*, alone or in combination. Yinger *et al.* is directed to installing applications on a server/ network on an as need basis. In Yinger *et al.*, in response to a client computer receiving a request to run an application, such computer determines whether the application exists thereon, and if not, subsequently installs it. Such does not consider *probabilistic/predicting* features, and maximizing values associated with *intelligently* downloading a resource, as in applicant's claimed invention.

Cherkasova *et al.* fails to cure the aforementioned deficiencies of Yinger *et al.* with respect to the subject claims. Cherkasova *et al.* employs a dynamic indicator that is a function of the *frequency of requests actually made for the object* (e.g., past usage) – not a probability/prediction feature (e.g., future usage) that accepts/determines variances as in the claimed invention – in fact the term "probability" does not appear in any of the cited references.

Independent claim 1 recites "determining a *probability* of using a resource", and independent claim 15 recites "means for *intelligently* downloading a resource based on a probability of use." Similar limitations of "determining a *probability* of use for a resource by a user in a user type class", and "*predicting* an expected frequency of use for a software component", "accepting *probabilistic* relationships between the at least one user based factor and the at least one resource based factor" appear in independent claims 16, 17, and 40 respectively.

In view of at least the above comments, it is readily apparent that Yinger *et al.* or Cherkasova *et al.*, alone or in combination, do not teach or suggest applicant's claimed

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invention as recited in independent claim 1 (and claims 3-14 dependent therefrom), independent claim 15, 16, independent claim 17 (and claims 18-21 dependent therefrom), independent claim 40 (and claims 42- 45 dependent therefrom.)

II. Rejection of Claims 22-39 and 41-43 Under 35 U.S.C. §103(a)

Claims 22-39 and 41- 43 stand rejected under 35 U.S.C. §103(a) as being obvious over Yinger *et al.* in view of Cherkasova *et al.*, and further in view of Fischer *et al.* (U.S. 6,438,672). Claim 41 is cancelled herein.

Independent claim 22 recites “accepting *probabilistic relationships* between user based factors and resource based factors”, and as noted above Yinger *et al.* or Cherkasova *et al.*, alone or in combination fail to teach or suggest such limitations of claim 22. Likewise and as explained above, Yinger *et al.* as modified by Cherkasova *et al.* does not teach or suggest independent claim 40 (and claims 41-43 dependent therefrom) and independent claim 32 (and claims 33-38 dependent therefrom.)

It is respectfully submitted that Fischer *et al.* does not make up for the aforementioned deficiencies of Yinger *et al.* as modified by Cherkasova *et al.* with respect to the subject claims, and hence withdrawal of this rejection is respectfully requested.

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CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP291US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,
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